

AMENDED IN ASSEMBLY APRIL 21, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 879

Introduced by Assembly Member Torrico
(Coauthor: Senator Romero)

February 18, 2005

An act to amend Sections ~~98 and 98.2~~ 98, 98.2, and 2673.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 879, as amended, Torrico. Employment law violations: remedies.

Under existing law, if an employee believes an employer has failed to pay wages required by contract or statute, the employee may either file a civil action against the employer or file a wage claim with the Labor Commissioner seeking administrative relief. Where the administrative remedy is pursued, either party may appeal the decision of the Labor Commissioner to the superior court, for a hearing de novo.

This bill would provide that, where an employer fails to file an answer to the administrative complaint, to attend the administrative hearing, and to seek relief for failing to do so, the superior court would not hear the appeal on a de novo basis, but would review the administrative decision only for an abuse of discretion, unless the superior court granted relief to the employer from the administrative decision under specified criteria.

Under existing law, the procedures applicable to an administrative hearing and any appeal thereof on a claim by a garment worker are

the same, except as specified, as the procedures applicable to claims filed with the Labor Commissioner by other types of employees.

This bill would make technical, nonsubstantive changes to the procedures applicable to claims by garment workers.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98 of the Labor Code is amended to
2 read:

3 98. (a) The Labor Commissioner is authorized to investigate
4 employee complaints. The Labor Commissioner may provide for
5 a hearing in any action to recover wages, penalties, and other
6 demands for compensation properly before the division or the
7 Labor Commissioner including orders of the Industrial Welfare
8 Commission, and shall determine all matters arising under his or
9 her jurisdiction. It is within the jurisdiction of the Labor
10 Commissioner to accept and determine claims from holders of
11 payroll checks or payroll drafts returned unpaid because of
12 insufficient funds, if, after a diligent search, the holder is unable
13 to return the dishonored check or draft to the payee and recover
14 the sums paid out. Within 30 days of filing of the complaint, the
15 Labor Commissioner shall notify the parties as to whether a
16 hearing will be held, or whether action will be taken in
17 accordance with Section 98.3, or whether no further action will
18 be taken on the complaint. If the determination is made by the
19 Labor Commissioner to hold a hearing, the hearing shall be held
20 within 90 days of the date of that determination. However, the
21 Labor Commissioner may postpone or grant additional time
22 before setting a hearing if the Labor Commissioner finds that it
23 would lead to an equitable and just resolution of the dispute.

24 It is the intent of the Legislature that hearings held pursuant to
25 this section be conducted in an informal setting preserving the
26 right of the parties.

27 (b) When a hearing is set, a copy of the complaint, which shall
28 include the amount of compensation requested, together with a
29 notice of time and place of the hearing, shall be served on all
30 parties, personally or by certified mail.

1 (c) Within 10 days after service of the notice and the
2 complaint, a defendant may file an answer with the Labor
3 Commissioner in any form the Labor Commissioner prescribes,
4 setting forth the particulars in which the complaint is inaccurate
5 or incomplete and the facts upon which the defendant intends to
6 rely.

7 (d) No pleading other than the complaint and answer of the
8 defendant or defendants shall be required. Both shall be in
9 writing and shall conform to the form and the rules of practice
10 and procedure adopted by the Labor Commissioner.

11 (e) Evidence on matters not pleaded in the answer shall be
12 allowed only on terms and conditions the Labor Commissioner
13 shall impose. In all these cases, the claimant shall be entitled to a
14 continuance for purposes of review of the new evidence.

15 (f) If the defendant fails to appear or answer within the time
16 allowed under this chapter, no default shall be taken against him
17 or her, but the Labor Commissioner shall hear the evidence
18 offered and shall issue an order, decision, or award in accordance
19 with the evidence. A defendant failing to appear or answer, or
20 subsequently contending to be aggrieved in any manner by want
21 of notice of the pendency of the proceedings, may apply to the
22 Labor Commissioner for relief in accordance with Section 473 of
23 the Code of Civil Procedure. The Labor Commissioner may
24 afford this relief. No right to relief, including the claim that the
25 findings or award of the Labor Commissioner or judgment
26 entered thereon are void upon their face, shall accrue to the
27 defendant in any court unless prior application is made to the
28 Labor Commissioner in accordance with this chapter.

29 (g) All hearings conducted pursuant to this chapter are
30 governed by the division and by the rules of practice and
31 procedure adopted by the Labor Commissioner.

32 (h) Whenever a claim is filed under this chapter against a
33 person operating or doing business under a fictitious business
34 name, as defined in Section 17900 of the Business and
35 Professions Code, which relates to the person's business, the
36 division shall inquire at the time of the hearing whether the name
37 of the person is the legal name under which the business or
38 person has been licensed, registered, incorporated, or otherwise
39 authorized to do business.

1 The division may amend an order, decision, or award to
2 conform to the legal name of the business or the person who is
3 the defendant to a wage claim, provided it can be shown that
4 proper service was made on the defendant or his or her agent,
5 unless a judgment had been entered on the order, decision, or
6 award pursuant to subdivision (e) of Section 98.2. The Labor
7 Commissioner may apply to the clerk of the superior court to
8 amend a judgment that has been issued pursuant to a final order,
9 decision, or award to conform to the legal name of the defendant,
10 provided it can be shown that proper service was made on the
11 defendant or his or her agent.

12 SEC. 2. Section 98.2 of the Labor Code is amended to read:

13 98.2. (a) Except as provided in subdivision (b), within 10
14 days after service of notice of an order, decision, or award, any
15 party may seek review by filing an appeal to the superior court,
16 where the appeal shall be heard de novo. A copy of the appeal
17 request shall be served upon the Labor Commissioner by the
18 appellant. For purposes of computing the 10-day period after
19 service, Section 1013 of the Code of Civil Procedure is
20 applicable.

21 (b) Notwithstanding subdivision (a), a party who has failed to
22 file an answer, to attend the administrative hearing, and to seek
23 administrative relief pursuant to subdivision (f) of Section 98,
24 shall not obtain a de novo hearing on appeal, but the superior
25 court shall review the administrative order, decision, or award for
26 an abuse of discretion only, unless the court finds that the
27 appellant is entitled to relief from the forfeiture of a de novo
28 hearing in accordance with Section 473 or 473.5 of the Code of
29 Civil Procedure.

30 (c) Whenever an employer files an appeal pursuant to this
31 section, the employer shall post an undertaking with the
32 reviewing court in the amount of the order, decision, or award.
33 The undertaking shall consist of an appeal bond issued by a
34 licensed surety or a cash deposit with the court in the amount of
35 the order, decision, or award. The employer shall provide written
36 notification to the other parties and the Labor Commissioner of
37 the posting of the undertaking. The undertaking shall be on the
38 condition that, if any judgment is entered in favor of the
39 employee, the employer shall pay the amount owed pursuant to
40 the judgment, and if the appeal is withdrawn or dismissed

without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, is forfeited to the employee.

(d) If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.

(e) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

(f) The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (e), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment shall then have the same force and effect as, and be subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.

(g) (1) In order to ensure that judgments are satisfied, the Labor Commissioner may serve upon the judgment debtor, personally or by first-class mail at the last known address of the judgment debtor listed with the division, a form similar to, and requiring the reporting of the same information as, the form approved or adopted by the Judicial Council for purposes of subdivision (a) of Section 116.830 of the Code of Civil

1 Procedure to assist in identifying the nature and location of any
2 assets of the judgment debtor.

3 (2) The judgment debtor shall complete the form and cause it
4 to be delivered to the division at the address listed on the form
5 within 35 days after the form is served on the judgment debtor,
6 unless the judgment has been satisfied. In case of willful failure
7 by the judgment debtor to comply with this subdivision, the
8 division or the judgment creditor may request the court to apply
9 the sanctions provided in Section 708.170 of the Code of Civil
10 Procedure.

11 (h) Notwithstanding subdivision (f), the Labor Commissioner
12 may stay execution of any judgment entered upon an order,
13 decision, or award that has become final upon a showing of good
14 cause and may impose the terms and conditions of the stay of
15 execution. A certified copy of the stay of execution shall be filed
16 with the clerk entering the judgment.

17 (i) When a judgment is satisfied in fact, other than by
18 execution, the Labor Commissioner may, upon the motion of
19 either party or on its own motion, order entry of satisfaction of
20 judgment. The clerk of the court shall enter a satisfaction of
21 judgment upon the filing of a certified copy of the order.

22 (j) The Labor Commissioner shall make every reasonable
23 effort to ensure that judgments are satisfied, including taking
24 appropriate legal action and requiring the employer to deposit a
25 bond as provided in Section 240.

26 (k) The judgment creditor, or the Labor Commissioner as
27 assignee of the judgment creditor, is entitled to court costs and
28 reasonable attorney's fees for enforcing a judgment rendered
29 pursuant to this section.

30 *SEC. 3 Section 2673.1 of the Labor Code is amended to read:*

31 2673.1. (a) To ensure that employees are paid for all hours
32 worked, a person engaged in garment manufacturing, as defined
33 in Section 2671, who contracts with another person for the
34 performance of garment manufacturing operations shall
35 guarantee payment of the applicable minimum wage and
36 overtime compensation, as required by law, that are due from
37 that other person to its employees that perform those operations.

38 (b) Where the work of two or more persons is being performed
39 at the same worksite during the same payroll period, the liability
40 of each person under this guarantee shall be limited to his or her

1 proportionate share, as determined by the Labor Commissioner
2 pursuant to paragraph (3) or (4) of subdivision (d).

3 (c) Employees may enforce this guarantee solely by filing a
4 claim with the Labor Commissioner against the contractor and
5 the guarantor or guarantors, if known, to recover unpaid wages.
6 Guarantors whose identity or existence is unknown at the time
7 the claim is filed may be added to the claim pursuant to
8 paragraph (2) of subdivision (d).

9 (d) Claims filed with the Labor Commissioner for payment of
10 wages pursuant to subdivision (c) shall be subject to the
11 following procedure:

12 (1) Within 10 business days of receiving a claim pursuant
13 subdivision (c), the Labor Commissioner shall give written notice
14 to the employee, the contractor, and persons that may be
15 guarantors of the nature of the claim and the date of the
16 meet-and-confer conference on the claim. Within 10 business
17 days of receiving the claim, the Labor Commissioner shall issue
18 a subpoena duces tecum requiring the contractor to submit to the
19 Labor Commissioner those books and records as may be
20 necessary to investigate the claim and determine the identity of
21 any potential guarantors for the payment of the wage claim,
22 including, but not limited to, invoices for work performed for any
23 and all persons during the period included in the claim.
24 Compliance with such a request for books and records, within 10
25 days of the mailing of the notice, shall be a condition of
26 continued registration pursuant to Section 2675. At the request of
27 any party, the Labor Commissioner shall provide to that party
28 copies of all books and records received by the Labor
29 Commissioner in conducting its investigation.

30 (2) Within 30 days of receiving a claim pursuant to
31 subdivision (c), the Labor Commissioner shall send a notice of
32 the claim and of the meet-and-confer conference to any other
33 persons who may be guarantors with respect to the claim.

34 (3) Within 60 days of receiving a claim pursuant to
35 subdivision (c), the Labor Commissioner shall hold a
36 meet-and-confer conference with the employee, the contractor,
37 and all known potential guarantors to attempt to resolve the
38 claim. Prior to the meet-and-confer conference, the Labor
39 Commissioner shall conduct and complete an investigation of the
40 claim, shall make a finding and assessment of the amount of

1 wages owed, and shall conduct an investigation and determine
2 each guarantor's proportionate share of liability. The
3 investigation shall include, but not be limited to, interviewing the
4 employee and his or her witnesses and making a finding and
5 assessment of back wages due, if any, to the employee. An
6 employee's claim of hours worked and back wages due shall be
7 presumed valid and shall be the Labor Commissioner's
8 assessment, unless the contractor provides specific, compelling,
9 and reliable written evidence to the contrary and is able to
10 produce records pursuant to subdivision (d) of Section 1174 or
11 Section 2673 that are accurate and contemporaneous, itemized
12 wage deduction statements pursuant to Section 226, bona fide
13 complete and accurate payroll records, and evidence of the
14 precise hours worked by the employee for each pay period during
15 the period of the claim. If the Labor Commissioner finds
16 falsification by the contractor of payroll records submitted for
17 any pay period of the claim, any other payroll records submitted
18 by the contractor shall be presumed false and disregarded.

19 The Labor Commissioner shall present his or her findings and
20 assessment of the amount of wages owed and each guarantor's
21 proportionate share thereof to the parties at the meet-and-confer
22 conference and shall make a demand for payment of the amount
23 of the assessment. If no resolution is reached, the Labor
24 Commissioner shall, at the meet-and-confer conference, set the
25 matter for hearing pursuant to paragraph (4). The Labor
26 Commissioner's assessment, pursuant to this paragraph, of the
27 amount of back wages due is solely for purposes of the
28 meet-and-confer conference and shall not be admissible or be
29 given any weight in the hearing conducted pursuant to paragraph
30 (4). If the Labor Commissioner has not identified any potential
31 guarantors after investigation and the matter is not resolved at the
32 conclusion of the meet-and-confer conference, the Commissioner
33 shall proceed against the contractor pursuant to Section 98.

34 (4) The hearing shall commence within 30 days of, and shall
35 be completed within 45 days of, the date of the meet-and-confer
36 conference. The hearing may be bifurcated, addressing first the
37 question of liability of the contractor and the guarantor or
38 guarantors, and immediately thereafter the proportionate
39 responsibility of the guarantors. The Labor Commissioner shall
40 present his or her proposed findings of the guarantor's

1 proportionate share at the hearing. Any party may present
2 evidence at the hearing to support or rebut the proposed findings.
3 Except as provided in this paragraph, the hearing shall be held in
4 accordance with the procedure set forth in subdivisions (b) to (h),
5 inclusive, of Section 98. It is the intent of the Legislature that
6 these hearings be conducted in an informal setting preserving the
7 rights of the parties.

8 (5) Within 15 days of the completion of the hearing, the Labor
9 Commissioner shall issue an order, decision, or award with
10 respect to the claim and shall file the order, decision, or award in
11 accordance with Section 98.1.

12 (e) An employee shall be entitled to recover, from the
13 contractor, liquidated damages in an amount equal to the wages
14 unlawfully withheld, as set forth in Section 1194.2, and
15 liquidated damages in an amount equal to unpaid overtime
16 compensation due. A guarantor under subdivision (a) shall be
17 liable for its proportionate share of those liquidated damages if
18 the guarantor has acted in bad faith, including, but not limited to,
19 failure to pay or unreasonably delaying payment to its contractor,
20 unreasonably reducing payment to its contractor where it is
21 established that the guarantor knew or reasonably should have
22 known that the price set for the work was insufficient to cover
23 the minimum wage and overtime pay owed by the contractor,
24 asserting frivolous defenses, or unreasonably delaying or
25 impeding the Labor Commissioner's investigation of the claim.

26 (f) If either the contractor or guarantor refuses to pay the
27 assessment, and the employee prevails at the hearing, the party
28 that refuses to pay shall pay the employee's reasonable attorney's
29 fees and costs. If the employee rejects the assessment of the
30 Labor Commissioner and prevails at the hearing, the employer
31 shall pay the employee's reasonable attorney's fees and costs.
32 The guarantor shall be jointly and severally liable for the
33 contractor's share of the attorney's fees and costs awarded to an
34 employee only if the Labor Commissioner determines that the
35 guarantor acted in bad faith, including, but not limited to, failure
36 to pay, unreasonably delaying payment to the contractor,
37 unreasonably reducing payment to the contractor where it is
38 established that the guarantor knew or reasonably should have
39 known that the price set for the work was insufficient to cover
40 the applicable minimum wage and overtime pay owed by the

1 contractor, asserting frivolous defenses, or unreasonably delaying
2 or impeding the Labor Commissioner's investigation of the
3 claim.

4 (g) Any party shall have the right, *in accordance with Section*
5 *98.2*, to judicial review of the order, decision, or award of the
6 Labor Commissioner made pursuant to paragraph (5) of
7 subdivision (d) ~~as provided in Section 98.2~~. As a condition
8 precedent to filing an appeal, the contractor or the guarantor,
9 whichever appeals, shall post a bond with the Commissioner in
10 an amount equal to one and one-half times the amount of the
11 award. No bond shall be required of an employee filing an appeal
12 pursuant to Section 98.2. At the employee's request, the Labor
13 Commissioner shall represent the employee in the judicial review
14 as provided in Section 98.4.

15 (h) If the contractor or guarantor appeals the order, decision,
16 or award of the Labor Commissioner and the employee prevails
17 on appeal, the court shall order the contractor or guarantor, as the
18 case may be, to pay the reasonable attorney's fees and costs of
19 the employee incurred in pursuing his or her claim. If the
20 employee appeals the order, decision, or award of the Labor
21 Commissioner and the contractor or guarantor prevails on appeal,
22 the court may order the employee to pay the reasonable
23 attorney's fees and costs of the contractor employer or guarantor
24 only if the court determines that the employee acted in bad faith
25 in bringing the claim.

26 (i) The rights and remedies provided by this section do not
27 preclude an employee from pursuing any other rights and
28 remedies under any other provision of state or federal law. If a
29 finding and assessment is not issued as specified and within the
30 time limits in paragraph (3) of subdivision (d), the employee may
31 bring a civil action for the recovery of unpaid wages pursuant to
32 any other rights and remedies under any other provision of the
33 laws of this state unless, prior to the employee bringing the civil
34 action, the guarantor files a petition for writ of mandate within 10
35 days of the date the assessment should have been issued. If
36 findings and assessments are not made, or a hearing is not
37 commenced or an order, decision, or award is not issued within
38 the time limits specified in paragraphs (4) and (5) of subdivision
39 (d), any party may file a petition for writ of mandate to compel
40 the Labor Commissioner to issue findings and assessments,

1 commence the hearing, or issue the order, decision, or award. All
2 time requirements specified in this section ~~shall be~~ *are*
3 mandatory and shall be enforceable by a writ of mandate.

4 (j) The Labor Commissioner may enforce the wage guarantee
5 described in this section in the same manner as a proceeding
6 against the contractor. The Labor Commissioner may, with or
7 without a complaint being filed by an employee, conduct an
8 investigation as to whether all the employees of persons engaged
9 in garment manufacturing are being paid minimum wage or
10 overtime compensation and, with or without the consent of the
11 employees affected, commence a civil action to enforce the wage
12 guarantee. Prior to commencing such a civil action and pursuant
13 to rules of practice and procedure adopted by the Labor
14 Commissioner, the commissioner shall provide notice of the
15 investigation to each guarantor and employee, issue findings and
16 an assessment of the amount of wages due, hold a
17 meet-and-confer conference with the guarantors and employees
18 to attempt to resolve the matter, and provide for a hearing.

19 (k) Except as expressly provided in this section, this section
20 shall not be deemed to create any new right to bring a civil action
21 of any kind for unpaid minimum wages, overtime pay, penalties,
22 wage assessments, attorney's fees, or costs against a registered
23 garment manufacturer based on its use of any contractor that is
24 also a registered garment manufacturer.

25 (l) The payment of the wage guarantee provided in this section
26 shall not be used as a basis for finding that the registered garment
27 manufacturer making the payment is a joint employer,
28 coemployer, or single employer of any employees of a contractor
29 that is also a registered garment manufacturer.

30 (m) The Labor Commissioner may, in his or her discretion,
31 revoke the registration under this part of any registrant that fails
32 to pay, on a timely basis, any wages awarded pursuant to this
33 section, after the award has become final.